



Housing Policy and Practices Advisory Group Fair Housing Subcommittee Notes

February 8 Meeting Notes

Participating Members: Ilene Jacobs (Chair, CRLA), Barbara Kautz (Goldfarb & Lipman), John Ford (Monterey County), Kendra Harris (League of Cities), Navneet Grewal (Western Center on Law and Poverty), Valerie Feldman (Public Interest Law Project), Pedro Galvao (ABAG), Autumn Elliot (Disability Rights CA)

Staff: Paul McDougall (HCD)

Purpose

- The purpose is to look at fair housing under housing element law. Advocates feel that HCD has not addressed fair housing and that local governments do not have enough guidance on what needs to be included.
- The group initially discussed its purpose to only discuss proposals and only carry forward proposals with consensus however that motion was revised to clarify the group would present the various proposals and areas of consensus and disagreement to the larger group for its consideration.
- There was discussion about requirements for equity in existing housing element law but that the discussion should not be focused on whether fair housing is addressed in housing element law but where fair housing issues need to be addressed in housing elements. There was general agreement about fair housing being part of the housing element but also recognition there is room for improvement to statute and guidance. For more information on some fair housing requirements in housing element law, see guidance for program requirements at http://www.hcd.ca.gov/housing-policy-development/housing-element/pro_eho.php.
- The group provided general comment on the proposed purpose, including recognizing that RHNA and housing element law include a fair housing component and the purpose of the group should be to clarify, strengthen, enhance and improve fair housing provisions in the housing element.

Issue Areas Discussed

- How to address fair housing and affirmatively furthering fair housing requirements in housing element updates. Housing advocates suggested additional requirements and guidance for how to incorporate fair housing efforts and duties to AFFH in housing elements. Local government would be opposed to wholesale importing of the AFH or duplicating analysis because it is burdensome in an already large document and will have little impact, but that incorporating AFFH requirements into the housing element laws or guidance should be delayed until state analysis is complete. It was noted that the housing element law already requires zoning for a variety of housing choices, but that does not necessarily address housing and land use discrimination.
- Proposals to clarify or improve, should not just require more analysis, however, should bear results (e.g., policies, programs, outcome-oriented mechanisms) and not just require more analysis. Housing elements presently analyze population characteristics and demographics in the determination of housing need, but often lack programs to address discrepancies based on race, national origin, disability, or other protected class or special population needs.
- The state and every jurisdiction must affirmatively further fair housing and AFFH is an aspect of compliance with housing element law. This is required now and has been for a while. Housing elements might require a variety of housing choices, but many do not address *where* housing choices are available and how that has an impact on housing opportunities for all segments of the population. Fair housing implications should be evaluated, for example, when a jurisdiction rezones or identifies sites. The State should be required to expand how it affirmatively furthers fair housing in housing element reviews now and how it will address the requirements to do that in the future.
- The Federal government requires an assessment of land use in fair housing issues, so should housing element law and HCD guidance.
- The discussion of furthering fair housing does not have to be a duplication of the federal requirement. It could reference or supplement the federal requirement and add policies and programs to support furthering fair housing. Consistency among the housing element and the federal document is important.
- HCD guidance on fair housing is insufficient.
- HCD guidance could better address what local government could do to affirmatively further fair housing.
- The RHNA allocation mentions equity but the statute does not address equity in terms of where the RHNA is accommodated within a jurisdiction.

- ABAG to discuss potential proposals internally and send for group discussion.
- ABAG proposes to increase flexibility to count existing units toward the RHNA in order to better address displacement and gentrification issues. ABAG believes that most local governments do not have sufficient money to meet their full RHNA so need flexibility/options to meet the RHNA and it should not be limited to just larger jurisdictions. See Proposal 1.
- A proposal to count existing units toward the regional housing need could consider criteria for rapidly gentrifying areas.
- Past reviews of housing elements revealed a need for more clarity in the program section of housing element law, specifically GC Section 65583(c)(4). See Proposal 2.
- Analyses of farmworker needs are insufficient and requirements related to zoning for farmworkers could be clarified.
- A recent housing proposal restricted housing to single adult farmworkers faced discrimination challenges. Various zoning amendments (e.g., reasonable accommodation, SB 2, density bonus)) were delayed in the coastal commission process and the zoning package had to be detached (coastal and non-coastal) for approval. Monterey County will send some recommendations for the group's consideration.
- Other fair housing issues include the prohibition against perpetuating segregation in federal fair housing law, and unequal municipal services or infrastructure needs (under-served areas, disadvantaged communities, EJ communities).
- RHNA methodology could consider segregation. Western Center will send a proposal.

March 28 Meeting Notes

Participating Members: Ilene Jacobs (Chair, CRLA), Barbara Kautz (Goldfarb & Lipman), Kendra Harris (League of Cities), Navneet Grewal (Western Center on Law and Poverty), Valerie Feldman (Public Interest Law Project), Pedro Galvao (ABAG), Autumn Elliot and Dara Schur (Disability Rights CA)

Staff: Paul McDougall (HCD)

Summary

- The group re-visited its purpose with comments to reflect people with disabilities and accessibility issues.
- The group discussed 2 of the proposals shaped from the February call.
- Little discussion occurred around the remaining 3 proposals.

Proposal 1 Discussion

Proposal 1 incentivizes local government to add affordability in existing units by streamlining adequate sites and RHNA reporting requirements. Comments include

- What is meant by a pilot?
- What would be the impact of this proposal in rural areas? It seems more pertinent to urban areas.
- Simplifying requirements is favorable but the proposal does not simplify the requirements enough. The proposal includes references that are fairly complex and barriers to using the statute. For example, “committed assistance” has a narrow timing window, includes high standards such as “financially sufficient” and must be identified in the housing element.
- Use consistent statutory definitions such as transit priority areas instead of transit stations. Don’t introduce new terms.
- Does it address the provision of existing low then very low
- Adding affordability needs to be different from simply placing terms where a lower income household already resides.
- Devil is in the detail but there could be agreement in principle. Details such as defining rapidly gentrifying.
- Should have an accessibility component especially if rehabbing older buildings without accessibility
- How does this interact with rent control units or if market rate rents are less than deed restricted rents
- Concerns were expressed over allowing up to 25 percent of the RHNA (should be something lesser) and the unintended consequences of only using TPAs

- Consider revisiting existing provisions (all of GC 65583.1) to simplify so urban and rural jurisdictions can utilize the statute.
- Paul, Pedro and Barbara to discuss and bring back to the group
- Group will review other proposals and provide comment

Proposal 2 Discussion

Proposal 2 intends to clarify the needs and program sections of housing element law to address gentrification and displacement, provide guidance for local governments to identify residential capacity in an equitable manner throughout the jurisdiction and enhance fair housing program requirements to explicitly address the obligation to affirmatively further fair housing. Comments generally included:

- What is meant by non-deed restricted?
- COGs should provide the data to analyze the potential loss of housing stock due to gentrification
- How would a local government analyze potential loss of housing stock. The analysis would be burdensome with no clarity on what would meet the requirement
- Why did the proposal delete the suggestion for adding “the distribution of socio-economic characteristics”? That portion should stay in the proposal.
- Support (and no disagreement) was expressed for the proposed modification to identify residential capacity in an equitable manner
- With respect to the program portion of the proposal, conserve and improve should include the entire housing stock, not just non-deed restricted
- The proposal weakens the existing statute for conserving and improving the housing stock (GC 65583(c)(4)). It needs to keep the direction to improve housing conditions.
- General agreement was expressed for analyzing potential loss of housing stock if the analysis is not an added requirement on local governments and strengthening policies and programs for displacement

Areas of Potential Agreement

While complete consensus was not reached on the entirety of proposals 1 and 2, there was some agreement in principle. The proposals have been modified to address the major comments (See Attachment 1). The following is a summary of the major comments with accompanying modifications.

Proposal 2

Program 2 essentially clarifies existing requirements to address gentrification and displacement, equitable distribution of income groups and the obligation to affirmatively further fair housing. Major comments included:

- Adding analysis requirements for the potential loss of housing stock are a burden and create uncertainty for local governments

Modification: The proposal has added a requirement for HCD and COGS to develop and distribute data and analysis to assist in the preparation of needs assessments. This codifies and expands a successful practice in the 5th cycle.

- The proposal weakens the conserve and improve program requirement by deleting the condition of housing stock.

Modification: The proposal was revised to clearly require programs for the condition of the stock and the potential loss of housing stock.

Proposal 1

Program 1 intends to incentivize local governments to address displacement and gentrification by streamlining and adding flexibility to planning (GC Section 65583.1) and reporting (GC Section 65400) requirements on a *pilot* basis. Major comments included:

- The proposal would result in under-planning for lower income housing needs by allowing local governments to count existing units toward their adequate sites requirement.

Modification: The proposal sought to revise planning and reporting requirements. To address the disagreement about using existing units for demonstrating adequate sites, the modified proposal separates the reporting from demonstrating adequate sites and further streamlines the requirements so local governments will be encouraged to add affordability and conserve existing stock in specified areas. By separating planning and reporting, the group could come to agreement on a portion of the proposal.

- The proposal contains existing barriers to using the alternative adequate sites requirement. Namely, units would still have to meet the “committed assistance” requirement.

Modification: The proposal was modified to loosen the committed assistance requirement by allowing agreement up to the 4th year of the planning period. The proposal was also modified to separate and further streamlines the reporting option by deleting the committed assistance requirement.

- The proposal would not allow the same benefits to rural areas

Modification: The proposal refers to targeted growth areas which include disadvantaged unincorporated communities and was modified to include rural investment areas and areas of socio-economic opportunity which would apply to rural areas. While the definitions are potentially troublesome, the group could discuss the concept of broader targeted areas and the language could be refined.

Attachment 1

Proposals

Proposal 1 (Revised)

Government Code Section 65583.1 provides flexibility to local government by providing alternatives for accommodating the regional housing need allocation. The alternatives include substantial rehabilitation, conversion to affordability and preservation of at-risk units. This section of housing element law is challenging and complicated and as a result under-utilized by local governments.

Preserving and adding affordable rental opportunities is an increasing concern given competitiveness in the rental market, particularly for lower income households. These pressures converge with state, regional and local policies and financial resources and other forces targeting development infill, transit and job rich areas which can lead to gentrification and displacement of lower and moderate income households and would be misaligned with the goals of AB 32, SB 375 and the State's planning priorities.

Incentives to local governments can be provided in order to address this issue by promoting and facilitating additional affordability while maximizing limited financial resources. This proposal would add alternatives to Section 65583.1. The additional alternative would allow crediting of existing units toward the regional housing need allocation where long term affordability is added in transit, job rich or high potential displacement areas. The additional alternative would cover annual reporting on progress toward the regional housing need and future identification of sites to accommodate the regional housing need. The requirements for this additional alternative would be considerably simplified compared to existing statute and would be on a pilot basis through the 5th and 6th cycles. The following is proposed language for a new subsection 65583.1(d):

Government Code Section 65583.1

(d) (1) The Department of Housing and Community Development may allow a city or county to substitute the provision of existing units for up to 25 percent of the community's obligation to report on progress pursuant to Government Code Section 65400 where units are provided in that income category. The community may substitute one dwelling unit for one dwelling unit in the applicable income category if the following are met:

- (A) Demonstrate that the units are located in a targeted growth area
- (B) The unit will be made available for rent at a cost affordable to low- or very low income households.
- (C) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(D) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to persons of low- or very low income for not less than 55 years.

(E) If the unit is occupied by low or very low income households, those households are allowed first right of occupancy in the identified complex or provided relocation assistance prior to displacement, if any, pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 or the relocation assistance includes not less than the equivalent of four months' rent and moving expenses and comparable replacement housing consistent with the moving expenses and comparable replacement housing required pursuant to Section 7260.

(2) The Department of Housing and Community Development may allow a city or county to substitute the provision of units for up to 25 percent of the community's obligation to identify adequate sites for any income category in its housing element pursuant to paragraph (1) of subdivision (c) of Section 65583 pursuant to Government Code Section 65400 where units are provided in that income category within the city or county that will be made available through the provision of committed assistance during the planning period covered by the element to low- and very low income households at affordable rents, as defined in Sections 50052.5 and 50053 of the Health and Safety Code. The community may substitute one dwelling unit for one dwelling unit site in the applicable income category. The program shall do all of the following:

(A) Identify and dedicate a specific portion of funds to provide committed assistance pursuant to this subdivision.

(B) Indicate the number of units that will be provided to either low- or very low income households and demonstrate that the amount of dedicated funds is sufficient to conserve or preserve the units at affordable rents.

(C) Demonstrate that the units are located in a targeted growth area

(D) Demonstrate the units will be converted with committed assistance to affordable by acquisition or purchase of affordability covenants and meet all the following:

(i) The unit will be made available for rent at a cost affordable to low- or very low income households.

(ii) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(iii) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to persons of low- or very low income for not less than 55 years.

(iv) If the unit is occupied by low or very low income households, those households are allowed first right of occupancy in the identified complex or provided relocation assistance prior to displacement, if any, pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 or the relocation assistance includes not less than the equivalent of four months' rent and moving expenses and comparable replacement housing consistent with the moving expenses and comparable replacement housing required pursuant to Section 7260.

(3) For purposes of this subdivision, "committed assistance" is defined pursuant to Section 65583.1(c)(4), however, a city or county, on an 8 year planning cycle pursuant to 65588(3)(3), may enter into a legally enforceable agreement up to the end of the 4th year of the planning period.

(4) On April 1 of each year subsequent to planned availability, the city or county shall report on the status of the committed assistance to the identified units. If, by April, at least one year after planned availability, the city or county has not committed assistance for all units specified in the programs the city or county shall, not later than December 31 of the third year of the planning period, adopt an amended housing element in accordance with Section 65585, identifying sufficient adequate sites pursuant to paragraph 65583(c)(1) or be subject to a four year planning period pursuant to Section 65585(e)(4).

(5) For the purposes of this subdivision, targeted growth area includes areas intended to achieve state planning priorities pursuant to Government Code Section 65041.1, reduce greenhouse gas emission, facilitate equitable distribution of income groups and promote use of existing infrastructure and may include:

- (A) Transit priority projects or areas pursuant to XXXXXXXX
- (B) Disadvantaged Communities pursuant to Government Code Section 65302.10
- (C) Areas of rapidly rising rents including an over 5% rent increases annually in the preceding three years
- (D) Areas of opportunity as identified in an analysis of socio-economic dissimilarity
- (E) Rural investment area as defined by XXXXXXXX

(7) This section shall become inoperative and is repealed for the seventh cycle of housing element updates pursuant to Section 65588 unless a later enacted statute, which is enacted prior to the sixth cycle of housing element updates extends these provisions.

Proposal 2 (Revised)

The existing statute could clarify the analysis required for the potential for displacement and geographic distribution of socio-economic characteristics (e.g., income). The analysis would better inform policies and programs to address displacement and equity issues. Statute would also clarify that analysis will be assisted with pre-approved data developed in coordination between COGs and HCD. The program section of housing element law also could be clarified to better accommodate policies and program to address these issues. Here is proposed language:

65583(a)(2)

An analysis and documentation of household characteristics, including level of payment compared to ability to pay **and geographic location compared to ability to pay and other socio-economic characteristics**, **and** housing characteristics, including overcrowding, **and** housing stock condition, **potential loss of affordability in non-deed restricted units by any public or private action which could include demolition or conversion to another use**

65583.2(a)

A city's or county's inventory of land suitable for residential development pursuant to paragraph (3) of subdivision (a) of Section 65583 shall be used to identify sites that can be developed for housing within the planning period **equitably throughout the community** and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584. As used in this section, "land suitable for residential development" includes all of the following:

65583(c)(4)

65583(c)(4) Conserve and improve the existing housing **stock including the condition and non-deed restricted** affordable housing stock to mitigate the loss **or potential loss of non-deed restricted affordable units by any public or private action such as rapidly rising rents, demolition or conversion to another use** ~~mitigate the loss or potential loss of affordability in non-deed restricted units and dwelling units demolished or otherwise converted to another use~~ **by public or private action.**

65583(c)(5)

Promote **and affirmatively further fair** housing opportunities for all persons **and housing throughout the community or communities** regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, ~~or~~ disability **and other characteristics protected by the Fair Employment and Housing Act or Section 65008 and other state and federal fair housing and planning laws.**

65584. (a) (1) For the fourth and subsequent revisions of the housing element pursuant to Section 65588, the department shall determine the existing and projected need for housing for each region pursuant to this article. For purposes of subdivision (a) of Section 65583, the share of a city or county of the regional housing need shall include that share of the housing need of persons at all income levels within the area significantly affected by the general plan of the city or county.

(2) While it is the intent of the Legislature that cities, counties, and cities and counties should undertake all necessary actions to encourage, promote, and facilitate the development of housing to accommodate the entire regional housing need, it is recognized, however, that future housing production may not equal the regional housing need established for planning purposes.

(b) The department, in consultation with each council of governments, shall determine each region's existing and projected housing need pursuant to Section 65584.01 at least two years prior to the scheduled revision required pursuant to Section 65588. The appropriate council of governments, or for cities and counties without a council of governments, the department, shall adopt a final regional housing need plan that allocates a share of the regional housing need to each city, county, or city and county at least one year prior to the scheduled revision for the region required by Section 65588. The allocation plan prepared by a council of governments shall be prepared pursuant to Sections 65584.04 and 65584.05 with the advice of the department.

(c) Notwithstanding any other provision of law, the due dates for the determinations of the department or for the council of governments, respectively, regarding the regional housing need may be extended by the department by not more than 60 days if the extension will enable access to more recent critical population or housing data from a pending or recent release of the United States Census Bureau or the Department of Finance. If the due date for the determination of the department or the council of governments is extended for this reason, the department shall extend the corresponding housing element revision deadline pursuant to Section 65588 by not more than 60 days.

(d) To the extent possible, the Department shall coordinate with councils of government to develop and distribute data and other analysis to assist in the preparation of housing needs assessments pursuant to Section 65583(a)(1-2) and (7).

Proposal 3

Fair housing guidelines should specifically address the analysis of farmworker housing needs and the development of farmworker programs in housing element updates and implementation. Farmworkers in California most often are in protected racial and ethnic categories, many are in large households (families and complex households), and all face discrimination in obtaining decent, affordable housing. They live in communities that suffer from unequal municipal services and a lack of adequate infrastructure. They face exploitation in housing and employment, which often are connected.

Housing element law defines farmworkers as a special needs population requiring local jurisdictions to analyze their needs and develop specific programs to address their needs (Government Code Sections 65583(a)(7) and 65583(c)(1)). Sites for farmworker housing in the housing element inventory should be separately identified under certain circumstances and should be separately identified in any inventory. (Government Code Section 65583.2(a))

Farmworkers and their families are very low and low income but have housing needs that are distinct from the lower income categories for a variety of reasons, e.g., their work is seasonal so their income fluctuates, it can be migratory and require maintenance of separate households, some with families, some that are complex, some that are large, and some are unaccompanied, requiring a mix of types of housing, a need for rental assistance and deeper subsidy and a need for additional services. Farmworkers reside in rural areas near their employment, in largely unregulated mobilehome parks, in densely populated urbanized areas within agricultural communities, in under-served remote areas, in all jurisdictions in California.

Housing elements must analyze and develop programs to address farmworker housing needs in each of these categories and must affirmatively fair housing to create housing opportunities for farmworkers, their families and complex households. Specific requirements and guidance are needed so that housing elements expressly identify sites for farmworker housing in their land inventory rather than any multi-family potentially affordable housing site as a farmworker housing site, do not limit farmworker housing programs to the requirements of Health & Safety Code [section] regarding agricultural zoning, and have more specific programs than working with or talking with employers or non-profit housing developers. Funding and time frames should be identified, with a responsibility for applications and development. Needs and demographic surveys should be undertaken according to specific standards. The effects of pressures of development, conditions of mobilehome parks, conversions, for example, must be addressed in a farmworker needs analysis and program.

Proposal 4

Federal and state fair housing law, as well as the Housing Element Law as they exist, require that the State and all jurisdictions analyze fair housing issues and create programs to implement fair housing goals - especially when all read together. Accordingly, one recommendation could be to promulgate guidelines/regulations that articulate how localities can assess their housing needs, identify sites, design programs, and take other steps in a manner that furthers fair housing. Guidelines, for example, could clarify that when developing programs to conserve the existing affordable housing stock, a jurisdiction should consider the risk of displacement due to market pressures/gentrification and the effect on protected classes, and, in turn, design programs to promote fair housing choice that would ensure that members of protected classes could remain in a diversifying neighborhood instead of being pushed out. Guidelines could explain that identifying adequate sites only in areas of high minority concentration may violate fair housing laws.

Proposal 5

RHNA allocations should take into account the locality's dissimilarity index, or similar measure of segregation. Housing needs compound over years, and starting each cycle anew regardless of a city's past actions ignores that. Allocations that consider segregation levels could help acknowledge the reality that historically exclusionary jurisdictions will require more sites for the development of affordable housing in order to counterbalance decades of discriminatory land use practices. The following is potential language:

GC Section 65584.04(d)

(d) To the extent that sufficient data is available from local governments pursuant to subdivision (b) or other sources, each council of governments, or delegate subregion as applicable, shall include the following factors to develop the methodology that allocates regional housing needs:

(1) Each member jurisdiction's existing and projected jobs and housing relationship.

(2) The opportunities and constraints to development of additional housing in each member jurisdiction, including all of the following:

(A) Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction ~~that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period~~ **and lack of capacity in underserved and disadvantaged communities pursuant to Section 65302.10.**

(B) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities. The council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land suitable for urban development may exclude lands where the Federal Emergency Management Agency (FEMA) or the Department of Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.

(C) Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis.

(D) County policies to preserve prime agricultural land, as defined pursuant to Section 56064, within an unincorporated area.

(3) The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and existing transportation infrastructure.

- (4) The market demand for housing.
- (5) Agreements between a county and cities in a county to direct growth toward incorporated areas of the county.
- (6) The loss of units contained in assisted housing developments, as defined in paragraph (9) of subdivision (a) of Section 65583, that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.
- (7) High-housing cost burdens.
- (8) The housing needs of farmworkers.
- (9) The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction.
- (10) Patterns of segregation, socio-economic dissimilarities and other analysis to affirmatively further fair housing
- (1011) Any other factors adopted by the council of governments.

Proposal 6 (From Disability Rights California)

HCD should address fair housing issues more specifically in guidelines and in implementation, particularly in light of the statutory obligation to “promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability” (Government Code Section 65583(c)(5)), and in light of the State’s obligation as a recipient of CDBG and other federal dollars to affirmatively further fair housing. This should include ensuring meaningful fair housing *actions* on behalf of all protected classes, not just contracting with a fair housing group to respond to limited numbers of complaints about private landlords. In particular, localities should be able to demonstrate that they have a process for addressing grievance against *the entity itself* relating to fair housing, not just that they fund someone to respond to landlord complaints.

While HCD’s interpretations of many fair housing issues on their web site are helpful, more guidance and enforcement is needed. Specifically in regards to fair housing and the needs of people with disabilities, the housing element statute requires a number of activities related to ensuring that the rights of people with disabilities are analyzed and addressed, such as requiring an analysis of constraints on housing for people with disabilities and an analysis of the special housing needs, including people with disabilities. Government Code Section 65583(a)(5) and (7)). It also requires that the locality’s housing program identify sites for supportive housing, and remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. Government Code Section 65583(c)(1) and (3).

Almost all multi-family housing must comply with the most recent accessibility provisions in California Building Code 11A and 11B. The state, and all local governments who receive federal dollars (particularly but not exclusively housing dollars) also have obligations to ensure that their housing programs as a whole are accessible to people with disabilities, that services are provided in the most integrated setting (including supported housing), and that housing which receives government assistance and support meets the Section 504 requirements for percentages of accessible units and priorities for people with disabilities. See, e.g., 24 C.F.R. Part 8.

A locality should not be considered to be in compliance with the fair housing and disability provisions of the housing element statute if it is out of compliance with these basic obligations to serve people with disabilities, or has not analyzed these issues as part of the constraints analysis and developed a timely program to address any deficiencies. Enforcement should ensure that programs are implemented in a timely fashion.

One area in particular where additional attention is needed is the provision of accessible housing units, particularly in housing subsidized by public dollars or through local density bonus and similar programs. We recommend that HCD strengthen its guidance and enforcement in this area, both to meet the requirements of the Housing Element Statute and to help the State meet its obligations both to Affirmatively Further Fair Housing and to comply with Section 504 of the Rehabilitation Act and the ADA. HCD

currently identifies on its website one fair housing program that localities may adopt as a program to “Ensure all new, multifamily construction meets the accessibility requirements of the federal and State fair housing acts through local permitting and approval processes.” However, this should not be an optional program. HCD should require, as a component of both the fair housing and the other disability provisions of the statutes, that all localities review their policies and permitting processes and requirements in this area and bring them into compliance with federal and state law. They also should be required to explain how their housing programs meet other fair housing obligations to provide program access and reasonable accommodations. Localities should not be found in compliance if they are violating these basic obligations, unless there is a clear program and deadline to achieve compliance.